

MINUTES
SAN DIEGO COUNTY PLANNING COMMISSION
Regular Meeting – October 31, 2008
DPLU Hearing Room, 9:00 a.m.

The meeting convened at 9:04 a.m. and adjourned at 10:37 a.m.

A. ROLL CALL

Commissioners Present: Beck, Brooks, Day, Kreitzer, Pallinger, Woods

Commissioners Absent: Riess

Advisors Present: Alazaraki, Taylor (OCC); Eslambolchi (DPW)

Staff Present: Bennett, Farace, Gibson, Giffen, Maxson, Murphy, Oberbauer, Russell, Stephenson, Jones (recording secretary)

B. Statement of Planning Commission's Proceedings, Approval of Minutes for the Meeting of October 17, 2008.

Action: Brooks - Kreitzer

Approve the Minutes of October 17, 2008.

Ayes: 6 - Beck, Brooks, Day, Kreitzer, Pallinger, Woods
Noes: 0 - None
Abstain: 0 - None
Absent: 1 - Riess

C. Public Communication: Opportunity for members of the public to speak to the Commission on any subject matter within the Commission's jurisdiction but not an item on today's Agenda.

None.

D. Announcement of Handout Materials Related to Today's Agenda Items

E. Formation of Consent Calendar

POD 08-009, Agenda Item 1:

1. Policy and Ordinance Development, POD 08-009, Noise Ordinance, County-Wide (continued from October 17, 2008)

Proposed amendment to the County Noise Ordinance conducted by County Counsel in consultation with DPLU Staff as part of a comprehensive update of Title 3 of the County Code of Regulatory Ordinances. The proposed Noise Ordinance will help clarify regulations, improve readability and upgrade enforcement components available in the Ordinance. This Item was last discussed by the Planning Commission on May 2, 2008.

Staff Presentation: Farace

Proponents: 3; **Opponents:** 2

Discussion:

Staff apprises the Planning Commission of a number of changes that have been made to the Ordinance since it was last presented to the Planning Commission in May 2008. The more substantial changes pertain to clarification of construction noise limitations, operation of off-road vehicles (ORVs) on private property, and revisions to impulsive noise sources. These recommendations have also been presented to the County's Industry Advisory Group, the Noise Technical Committee, the San Diego Chapter of the General Contractors of America, and the public.

Staff's May 2008 Report introduced the Lmax noise measurement methodology, which allows capture of short-duration events or episodes of high intensity that can't adequately be sampled with a one-hour average (Leq) at the property line limit. The Report also included a section specifically addressing ORV noise. That Section has been revised to include an increase in the Lmax between the hours of 7:00a and 7:00p, from 65 decibels to 82 decibels. From 7:00p until 10:00p, the sound level was increased from 55 decibels to 77, and increased to 55 decibels between the hours of 10:00p and 7:00a.

Staff has also conducted additional research for ORV property line limitations, and the proposed standards are consistent with both the Federal Environmental Protection Agency (EPA) regulations and the State of California Vehicle Code, which stipulates that motorized vehicles manufactured after January 1986 shall not produce noise emissions greater than 82 decibels when measured pursuant to the Federal EPA pass-by test. The California Vehicle Code also requires that an ORV manufactured after January 1986 does not to exceed 82 decibel noise level emission when using a pass-by test.

POD 08-009, Agenda Item 1:

The existing Noise Ordinance includes regulations pertaining to ORV uses. Section 23130 of the California Vehicle Code, which included an 82-decibel noise emission level for motorcycles, was repealed in 2001, thereby rendering that portion of the County's Noise Ordinance unenforceable. A new Section, Section 38370, has been added which again sets an 82-decibel noise emission level when using a pass-by test.

Staff has discussed the feasibility of implementing an ORV Ordinance similar to that of Riverside County, but research has determined that the use of existing codes and Ordinances will suffice. Staff found Riverside County's Ordinance is far too restrictive to be practical. The proposed changes to Title 3 will to further improve the Noise Ordinance and allow an additional enforcement tool. Staff believes the proposed Lmax standards provide a reasonable limitation consistent with EPA and California Vehicle Code requirements.

Staff explains that the existing Noise Ordinance does not provide guidance on the duration of an hourly average for assessing construction noise. An eight-hour average has been added to the existing 75-decibel sound level requirement to address construction noise. Staff's previous version of this Ordinance included a one-hour average. The eight-hour requirement was inadvertently deleted during the 2003 Noise Ordinance amendment. Re-inclusion of the requirement will allow a more realistic assessment of construction operations.

Staff has received comments regarding implementation of Ordinance, opposition to the added ORV limitations, and concerns that the Ordinance does not go far enough in protecting residents from exposure to ORV noise and/or impulsive noise generators. Staff explains that the Lmax standard for ORV and impulsive noise sources is in addition to the existing one-hour average contained in Section 36404 of the Noise Ordinance. Staff has determined that the Lmax is much more effective on large parcels (10 or more acres).

Concerns have also been raised about the enforceability of the Ordinance and, Staff acknowledges that while Code Enforcement Staff are the primary responsible Staff, it is hoped that the Sheriff's Department personnel will also become involved in the future.

Supporters of Staff's recommendations explain to the Planning Commission that the Lmax standards have been used for construction noise monitoring. They reassure the Commission that the 82-decibel limitation will afford the County a great deal of control in addressing ORV noise issues. They believe Staff's recommendations are a reasonable approach to what can sometimes be an emotional powder-keg for property owners, and the addition of the Lmax has been needed for a long time. They encourage Staff to consider reevaluating the

POD 08-009, Agenda Item 1:

interface between industrial and residential uses in the General Plan Update, as issues pertaining to noise become much more critical when industrial uses are located next to residential.

Those opposed to the revised Ordinance are concerned that Staff's recommendations are too restrictive. They insist that there are more than enough methods and regulations available to Staff to address motorized uses on private property. They also remind the Commission that this type of Ordinance is subject to abuse by neighbors who just don't like each other.

Commissioner Day has very strong opinions about these recommendations as they pertain to the use of ORVs on private property. He believes Staff is focusing on one activity of one segment of the population, which is unfair. Commissioner Day does not believe the County should try to regulate the use of private vehicles on private property, and also recommends that Section 36416 be deleted in its entirety.

Action: Beck – Kreitzer

Recommend that the Board of Supervisors adopt Staff's proposed amendments to the Noise Ordinance.

Discussion of the Action:

Commissioner Kreitzer understands Commissioner Day's concerns, but believes the use of ORVs on private property can greatly impact the quality of life of neighboring property owners. Commissioner Beck concurs, and states his belief that Staff has developed a very reasonable and balanced solution for dealing with these issues. He does not support the deletion of Section 36416 from the proposed amendments. Though supportive of Commissioner Day's position, particularly with respect to private property rights, both Commissioners Pallinger and Brooks support this Motion, because it will add protection for neighboring property owners' quality of life.

Ayes:	5 -	Beck, Brooks, Kreitzer, Pallinger, Woods
Noes:	1 -	Day
Abstain:	0 -	None
Absent:	1 -	Riess

P06-084W¹, Agenda Item 2:**2. T-Mobile/Morganson, Major Use Permit Modification P06-084W¹, North County Metro Subregional Planning Area**

Requested Major Use Permit Modification (P06-084W¹) to change Condition B.1. (Prior to Occupancy) contained in previously approved Major Use Permit P06-084. The proposed change will allow sight distance to be measured along Foothill Drive at the intersection of Don's Way instead of at Foothill Drive and Tierra Verde Road. The previously approved project is an unmanned wireless telecommunications facility consisting of a 50' tall mono-palm with 12 antennas. Associated equipment includes four equipment cabinets and a utility cabinet located in the 7' tall CMU enclosure. No new structures are proposed as part of P06-084W¹. The project site is located at 2230 Tierra Verde Road in the North County Metropolitan Subregional Plan Area.

Staff Presentation: Chan

Proponents: 1; **Opponents:** 0

Discussion:

This Major Use Permit Modification is approved on consent.

Action: Beck – Day

Grant Major Use Permit Modification P06-084W¹, which makes the appropriate Findings and includes those requirements and Conditions necessary to ensure that the project is implemented in manner consistent with the Zoning Ordinance and State Law.

Ayes:	6 -	Beck, Brooks, Day, Kreitzer, Pallinger, Woods
Noes:	0 -	None
Abstain:	0 -	None
Absent:	1 -	Riess

P75-093W³, Agenda Item 3:**3. PacBell/Stagecoach, Major Use Permit Modification P75-093W³, Fallbrook Community Plan Area**

The project is a Major Use Permit Modification to authorize the construction and operation of an unmanned wireless telecommunications facility. The project consists of twelve (12) panel antennas facade mounted on the north, west and south sides of an existing Pacific Bell/SBC Central Office building. The panel antennas will not extend beyond the height of the existing building and will be painted to match the building's color. The supporting equipment includes six (6) self-contained Base Transceiver Station (BTS) outdoor equipment cabinets, one within a custom built concrete block enclosure, which will be constructed to match the color and texture of the existing building. The project is subject to the Country Town (CT) General Plan Regional Category, the (3) Residential Land Use Designation, and is zoned (RR2) Rural Residential. The project is located at 717 North Stagecoach Lane.

Staff Presentation: Lubich

Proponents: 1; **Opponents:** 0

Discussion:

This Major Use Permit Modification is approved on consent.

Action: Beck – Day

Grant Major Use Permit Modification P75-093W³, which makes the appropriate Findings and includes those requirements and Conditions necessary to ensure that the project is implemented in manner consistent with the Zoning Ordinance and State Law.

Ayes:	6 -	Beck, Brooks, Day, Kreitzer, Pallinger, Woods
Noes:	0 -	None
Abstain:	0 -	None
Absent:	1 -	Riess

Administrative:

F. Director's Report:

- **East Otay Mesa Burrowing Owl Status Report (Bobbie Stephenson), continued from the meeting of October 17, 2008**

This report was requested by Commissioner Beck on June 13, 2008, following the Commission's consent approval of Major Use Permit Modification P98-024W¹, a travel plaza multi-use commercial facility and truck stop in East Otay Mesa (EOM). This report addresses the decline of MSCP-covered species on the EOM. The burrowing owl is of particular concern, as their population has declined by 90% in the County during the past 30 years. In the early 1980s there were 250-300 breeding pairs of burrowing owls, with very few of them on the EOM. Today that population has been reduced to approximately 40-50 breeding pairs in all of the County, with 25-30 of those pairs on EOM.

Burrowing owl populations at other locations in the County have crashed due to several reasons: (1) loss of habitat to development; (2) reduced habitat suitability, such as degradation by the invasion of exotic species; (3) fragmentation of habitat by roads and development; and (4) other human disturbances. In addition, dogs dig the owls of their burrows, cars are driven over habitat, and burrows are sometimes filled with rocks.

Staff has no explanation for why the number of breeding pairs on the Mesa increased. They live in grasslands and sparse coastal sage scrub, and use burrows dug by other animals, in particular the California ground squirrel, and the owls are present in the County year-round, with migrants increasing the number on EOM during the winter. They are covered by the MSCP, but when the Program plan was prepared, the location of the preservation and development areas on EOM were not resolved. At that time, there were few burrowing owls on the Mesa.

The lands that were not placed in either the take-authorized or preserve areas were designated as either major or minor amendment areas, or as minor amendment areas subject to special considerations. Most development lands on the Mesa are in the minor amendment area. Amending a project area into the MSCP and allowing take of the species on it requires mitigation agreed to by the County, the Department of Fish and Game and the U.S. Fish and Wildlife Service.

Administrative:

Mitigation over the years has been on a project-by-project basis. Depending on whether or not the site was occupied by burrowing owls, applicants were required to preserve grasslands and coastal sage scrub onsite or purchase preservation land on the EOM. In addition, projects were required to do various types of enhancements for burrowing owls on those mitigation parcels, such as installing artificial burrows, building natural rubble mounds to entice ground squirrels, increasing native grasses, creating sparse coastal sage scrub and actively or passively relocating the owls.

The County established an Otay Mesa Grassland Mitigation fund in 2006 for projects that would impact non-native grassland habitat that did not contain burrowing owls. This was done in response to the attempts of several project applicants to assemble mitigation packages for their projects. The funds were intended to be used to support management, monitoring and acquisition of mitigation land for grassland and burrowing owl impacts. Impacts were mitigated at \$10,000 per acre, and the funds were used to actively transfer Burrowing owls for the travel plaza project. Translocation failed and, because translocation had no success criteria to be met, that mitigation measure was never successfully completed. The fund is no longer an option.

As development spreads on EOM, mitigation land on the Mesa has become limited and expensive, costing \$70,000-80,000 per acre. The cost is high enough to seriously impact the economic viability of projects, and it has become incumbent on the County to devise a Mesa-wide strategy. Staff envisions that strategy being for MSCP-covered grassland species on EOM. It will be consistent for all developers, and will be included in the next revision of the County's Guidelines for Determining Significance for Biological Resources.

The draft strategy, as part of the Guidelines, will be developed by the County, reviewed by environmental resource protection agencies, the technical advisory committee (a committee comprised of County biologists, consulting biologists and representatives of local conservation organizations), and the BPR stakeholders group. The strategy will be revised accordingly and sent out for public review. Comments and revisions to the document will be coordinated with the agencies, the technical advisory committee and the stakeholders before being finalized.

Administrative:

Though the burrowing owl has been the impetus for developing this strategy, it will not be just for them. It will also be directed at other MSCP-covered animal species that are largely dependent on grasslands and sparse coastal sage scrub. Migratory species will also benefit from the strategy.

Projects should always be designed to avoid impacting biological resources. If, however, impacts cannot be avoided, they should be minimized. The mitigation strategy will most likely consist of preservation of a combination of on-and-off-EOM land, with appropriate off-Mesa regions identified. If Burrowing owls are present on the proposed project site, the strategy will require their passive relocation. Mitigation site enhancements could include installation of artificial burrows, natural rubble piles, and revegetation of grasslands and sparse coastal sage scrub. Project proposals will be obligated to provide a maintenance and monitoring plan with success criteria that must be met to fulfill mitigation requirements. Management of the mitigation site will be adaptive, and techniques will change as conditions change on the site. The strategy will also include regular reports to the County and the resource agencies.

The preservation focus on EOM will be on the two burrowing owl nodes agreed upon by the County, Fish and Game, and Fish and Wildlife Service representatives. That working group has not met yet, but Staff expects development of a Mesa-wide strategy to be ready for approval in March 2009.

Commissioner Beck voices great support for Staff's mitigation strategy, and lists a number of other MSCP-covered species that are crashing. He reminds everyone that the County is 20 years beyond the beginning of the MSCP discussions, and more than 10 years into the Program's implementation. Though it has benefited development, species are crashing at a phenomenal rate. Commissioner Beck believes Staff's strategy is a good start, but isn't sure if it's adequate for stabilizing the burrowing owl population. Upon learning that the cities of Chula Vista and San Diego are not working with Staff on developing this strategy, he encourages discussions with representatives of those entities. He strongly believes this must be coordinated with every permit holder in the MSCP who has any land-use relationship to the burrowing owl crises or any other species that is crashing.

Administrative:

Commissioner Beck is relieved to hear that all mitigation for impacts to burrowing owls requires their passive relocation. He believes they are one of the species that, with enough attention and appropriate success criteria, can be translocated. Commissioner Beck discusses the two nodes on the EOM, one northwest of the Bailey detention facility and the other in the southeastern part of the Mesa. Staff explains that the concept of the nodes was a result of field workshops held with the wildlife agencies and the cities of Chula Vista and San Diego several years ago. It was determined, at that time, that they would support five nodes on the Mesa. Staff has attempted follow-up discussions with the two cities, but has not received responses.

Commissioner Beck strongly recommends that the other three nodes be pursued for inclusion in the EOM amendment areas and in Staff's strategy. He notes that the County has historically had three grassland areas: the EOM, the western parcel of Otay Ranch and the Ramona/Lake Henshaw grasslands, and he wonders if the burrowing owl strategy addresses all three of those areas. When informed that it will not, Commissioner Beck agrees that owls on the EOM should be the priority and focus right now, but reminds Staff that the region-wide intent must be to ensure a viable, stable population of the owls. Other major crash areas cannot be ignored.

Before closing, Commissioner Beck discusses the Vista Irrigation District land which, at one time, contained a population of Burrowing owls. According to the Wildlife Research Institute, those populations have crashed. The Warner Springs golf course at the north end of Vista Irrigation District land no longer contains birds or ground squirrels. These species no longer exist for miles around the property. There are suspicions that the land has been poisoned. Monkey Island had ground squirrels and Burrowing owls around it, but they are also gone. Commissioner Kreitzer concurs with Commissioner Beck's comments. He also wonders whether the ongoing drought has added to the impact on animal populations, and Staff assures him that it has. Staff met with Vista Irrigation District reps and their board of directors and, at one point, it appeared that they would participate in the MSCP. However, there has been no other response from them for a significant period of time.

Administrative:

- **Results from Board of Supervisors' Hearing(s) of Items Previously Considered by the Planning Commission (Gibson)**
 1. The Board also re-adopted the County's Bicycle Transportation Plan.
 2. Staff will provide the Commissioners with an update on the Citygate Report/Service First Initiative during the November 21, 2008 meeting.

G. Report on actions of Planning Commission's Subcommittees:

None.

H. Designation of member to represent the Planning Commission at Board of Supervisors meeting(s):

No Board of Supervisors meetings are scheduled until November 19, 2008.

I. Discussion of correspondence received by the Planning Commission:

None.

J. Scheduled Meetings:

November 7, 2008	Regular Meeting, 9:00 a.m., DPLU Hearing Room
November 21, 2008	Regular Meeting, 9:00 a.m., DPLU Hearing Room
December 5, 2008	Regular Meeting, 9:00 a.m., DPLU Hearing Room
December 19, 2008	Regular Meeting, 9:00 a.m., DPLU Hearing Room
January 9, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
January 23, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
February 13, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room

Administrative:

February 27, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
March 13, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
March 27, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
April 10, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
April 24, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
May 8, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
May 22, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
June 5, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
June 19, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
July 10, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
July 24, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
August 7, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
August 21, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
September 4, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
September 19, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
October 2, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
October 16, 2009	Regular Meeting, 9:00 a.m., DPLU Hearing Room
October 30, 2009	Planning Commission Workshop, 9:00 a.m., DPLU Hearing Room

There being no further business to be considered at this time, the Chairman adjourned the meeting at p.m. to 9:00 a.m. on , 2008 in the DPLU Hearing Room, 5201 Ruffin Road, Suite B, San Diego, California.